IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 574 OF 1994

The State of Maharashtra ...Appellant.

V/s

Shri Girishkumar A. Dedhia
c/o. M/s Anchor Products,
Laxmi Udyog Nagar, L.B.S. Marg,
Kanjur Marg (West),
Bombay 400 078. ...Respondent.
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Mr. D.P. Adsule, APP for the appellant - State.

None for the respondent.
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CORAM: V.M.KANADE,J.
DATE: 22nd February, 2005

ORAL JUDGMENT:

1. The appellant - State is the original complainant who had filed a complaint against the respondent - accused through Shri Fakir Ismail Shaikh who was working as a Food Inspector at the time when he filed the complaint. The appellant is challenging the judgment and order passed by the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Bombay in C.C. No. 390/S/1990 dated 29/04/1994 whereby he was pleased to acquit the accused of the offences punishable under section 7(i) read with section 2(ia)(m) of the Prevention of Food Adulteration Act (For short "PFAA") read with sections 16 and 17 of the PFAA. The appellant has preferred this appeal against

acquittal against the said judgment and order.

2. Brief facts are that the complainant - Fakir Ismail Shaikh who was working as a Food Inspector at the relevant time visited the premises of the accused on 20/10/1986, who was engaged in manufacturing hard boiled sugar confectionery. The complainant purchased 900 gms of sugar coated confectionery in the presence of an independent witness and the same was sent to the Public Analyst who gave a report that the said sample was adulterated. The prosecution examined three witnesses i.e. P.W. 1 - Gajanan Patkar, who is a clerk working in the LHA, P.W. 2 - Fakir Ismail Shaikh, the Food Inspector who had filed the complaint against the accused and P.W. 3 - Atmaram Mane who was an independent witness who had signed the panchanama and in whose presence the said sample was supposedly taken.

3. I have perused the evidence of these three witnesses. P.W. 3 - Atmaram Mane has not supported the prosecution and he has not been declared hostile. He has stated that the labelling and sealing of the sample was not done in his presence and he had merely signed the panchanama and other papers at Exhibits-P-12, 13, 14 and 15. From this evidence, it

can be seen that the sample which had been taken by the Food Inspector was not obtained in the presence of an independent witness and the panchanama appears to have been prepared subsequently. Thus, the entire procedure of taking sample, sealing the same and sending it to the Laboratory has not been proved through an independent witness. The Food Inspector - P.W.2 also in his cross-examination has admitted that the sample was put in a polythene bag and it is further admitted that he has not put a seal on the mouth of the plastic bag nor had he cleaned the bag before using the same. Thus, in view of this clear admission given by the Food Inspector, it is abundantly clear that the mandatory provisions of Rules 14 and 16 of the Prevention of Food Adulteration Rules, 1955 have not been followed. The finding recorded by the Trial Court, therefore, will have to be confirmed.

4. Appeal is accordingly dismissed.

(V.M. KANADE, J.)